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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

October 12, 2001
AO-01- 27

Ms. Gloria Maina
Friends of the Georgetown Peabody Library
56 Baldpate Road
Georgetown, MA 01833

Re: Georgetown Peabody Library Addition

Dear Ms. Maina:

This letter is in response to your September 10, 2001 e-mail request for guidance and your conversation with an OCPF staff member regarding the provisions of the campaign finance law that supporters of the Georgetown Peabody Library need to be aware of in their efforts to expand the library.

In your e-mail to OCPF, you indicated that library trustees and The Friends of the Georgetown Peabody Library, Inc. ("the Friends") are working together to expand the Georgetown library. Insofar as you anticipate that a Proposition 2 ½ question to fund the project will appear on the ballot in a future election, you have sought guidance regarding "the legal limitations of informing the public of the library's needs and also doing some fundraising."

Specifically, you are interested in learning about the campaign finance law's effect on (1) the Friends; (2) Goal 2000, a subsidiary of the Friends organized specifically to raise funds to subsidize the expansion project; (3) library trustees, who are elected officials; and (4) library employees. Because you have asked for an overview of the law as opposed to specific advice, I will set forth a few general rules and then highlight some key points for each of the four groups listed.

I. GENERAL PRINCIPLES OF THE CAMPAIGN FINANCE LAW¹

A. PUBLIC RESOURCES AND CAMPAIGNS

¹ These principles are further described in OCPF's *Campaign Finance Guide: Public Employees, Public Resources and Political Activity*.

In *Anderson v. City of Boston*, 376 Mass. 178 (1978) appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. Consequently, this office has concluded that governmental entities may not contribute or expend public resources for the purpose of seeking to influence the vote in an election.² See OCPF's IB-91-01.

Public resources are broadly defined to include "anything that is paid for by taxpayers," including staff time, paper, stationery, and other supplies; offices, meeting rooms and facilities; copiers, computers, telephones, and fax machines; automobiles and other equipment purchased by the commonwealth or any of its subdivisions or maintained at government expense. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided in connection with the Georgetown library project except as provided in the following limited circumstances.

First a public entity, like the library, may make certain resources available to private groups for election-related activities, such as a room on its premises to meet. If this occurs "equal access," upon request, must be afforded to any other group on the same terms regardless of the group's point of view. See AO-00-04.

Also, library trustees, as elected officials, may use limited public resources to officially discuss and provide information about the library expansion if in doing so they are acting within the scope of their official responsibilities. See IB-92-02.

B. PUBLIC EMPLOYEES

M.G.L. c. 55, § 13 prohibits non-elected paid state, county, city or town employees from directly or indirectly soliciting or receiving political contributions. This includes fundraising activity on behalf of local ballot question committees and would apply during both working and non-working hours to full and part-time library employees, as well as any other paid government employees. See IB-92-01.

Public employees may contribute to ballot question committees and they may work to support or oppose the building project campaign in a non-fundraising capacity on their own time. See AO-93-04.

C. PUBLIC BUILDINGS

M.G.L. c. 55, § 14 prohibits *anyone* from soliciting or receiving political contributions in a building occupied for state, county or municipal purposes, such as the library. Please note that this restriction applies only to buildings, not all town property. For example, fundraisers may be held on the library's back lawn unless the town has a policy to the contrary. See AO-01-13.

² Anderson restricts the use of public resources to influence ballot elections only. The opinion does not apply to town meetings.

D. COERCION OR POLITICALLY RELATED JOB ACTIONS

Various sections of the campaign finance law protect public employees and those in the private sector from being forced to contribute or otherwise support a political committee. Likewise, the law also protects employees from being subject to retribution from their employers for not supporting a political committee. See M.G.L. §§ 16-17.

II. IMPACT OF THE CAMPAIGN FINANCE LAW ON PARTICULAR GROUPS

A. THE FRIENDS

As a private organization, the Friends has wide latitude in its ability to campaign for the library addition. Subject to the disclosure requirements of the campaign finance law, it may prepare and distribute information about the project and the library's needs, as well as expressly advocate for the passage of the project at town meeting or during a town election. The Friends may also pay to distribute informational material concerning an election prepared by trustees in the scope of their official responsibilities that would not otherwise be sent to voters because of the public resource and the Secretary of the Commonwealth's restrictions, which are discussed below.

The manner in which the Friends must report its election activity depends upon whether it intends to raise and spend money to support the project, or just spend. If the Friends does not intend to hold political fundraisers or otherwise collect contributions from its members or the public to use to support the library project, but only make expenditures from funds raised for a general purpose, then it need only disclose its expenditures, liabilities and "promises to pay" for goods or services to the Georgetown Town Clerk before and after the relevant election. See M.G.L. § 22 and IB-90-02.

The Friends must keep detailed records regarding any expenditure so that it may accurately disclose its activity. Specifically, the group will need to file a completed CPF Form M 22 eight days prior to the town election that addresses the override and thirty days after that election. The pre-election report will encompass the Friends' activity up until eighteen days prior to the election. The post-election report will encompass the Friends' activity through the twentieth day after the election. If the group has engaged in any election activity after that point or has outstanding liabilities, a year-end report would also be due. See M.G.L. § 22.

If, on the other hand, the Friends intends to solicit or receive contributions to support the library expansion, it must open a separate bank account and establish a ballot question committee with the Georgetown Town Clerk. This committee would report its activity according to the above schedule for M 22. Instead of that form, however, the ballot question committee would file Form M 102 BQ and disclose its receipts in addition to expenditures and liabilities.³ Of course, no fundraising should be undertaken by public employees or in a public building. See OCPF's *Campaign Finance Guide: Municipal Ballot Question Committees*.

The Friends may not use public resources to distribute information regarding the anticipated ballot question to voters.

³ If a ballot question committee is formed, the Friends may contribute without limit from its general treasury to the committee. If this were the case, the ballot question committee would disclose the funds received on its campaign finance report and the Friends would file a CPF Form M 22 disclosing the expenditure.

B. GOAL 2000

It is my understanding that Goal 2000 is a subsidiary of the Friends formed to raise funds *exclusively to subsidize library expansion costs*. As long as this remains the group's sole purpose, and no funds are used to influence voters, Goal 2000 would not be subject to the campaign finance law. Accordingly, Goal 2000 may place donation canisters in the library and at other locations in order to raise money for the limited purpose of subsidizing building costs. Funds raised in this manner may not be used to influence a ballot question.

If Goal 2000 engages in any activity that may be perceived as supporting or otherwise influencing a ballot question, the same provisions of the campaign finance law that apply to the Friends would apply to Goal 2000, including the general principals set forth in section one above.

C. TRUSTEES

Even though the project will be the subject of a ballot question, trustees have certain limited rights to use the public resources of their office, including staff time, to provide information and answer questions regarding library needs and the building project to the extent they are acting within the scope of their official responsibilities. For example, trustees may endorse the project and direct library employees to answer questions regarding the project.

Notwithstanding the above, trustees are still subject to the general prohibitions against using public resources for political purposes. They should therefore refrain from any activity that may be perceived as "campaigning" for the expansion with the library's resources. For a better understanding of the law as it pertains to them and for examples of permissible and impermissible activity, trustees should review IB-92-02.

If trustees do prepare informational material about the library's needs or the proposed addition, this material should not be copied and mailed to voters at public expense. Apart from being inconsistent with Anderson, above, the Secretary of the Commonwealth has advised that public officials may not publish and distribute so-called "voter information" materials, even if they are truly impartial, at public expense unless state statute expressly authorizes it. Instead, material prepared may be sent in response to a voter request, posted or made available in the library, or posted on the library's website if there is one. See AO-00-12.

Trustees should note that the "equal access" rule described above does not apply to information they prepare in the scope of their official responsibilities and display in the library, as opposed to material prepared by the Friends or another private group. As noted, to comply with the campaign finance law all interested parties must be granted the same access to library resources on the same terms regardless of their position on the expansion project.

The campaign finance law does not prohibit trustees, if they are not otherwise publicly employed, from engaging in political fundraising as long as library resources are not used and the fundraising does not take place in the library or any other building occupied for government purposes.

E. LIBRARY EMPLOYEES

Like trustees, library employees may not use public resources to promote the library addition or influence the vote on the override, but they may respond to inquiries from the public regarding the

proposed addition while at work. These principles would apply to workers during tours of the library given to the public in the course of their employment.

Although library employees may not directly or indirectly solicit or receive funds for a political purpose, they may support or oppose the project on their own time in a way that does not involve fundraising.

Please note that this opinion is issued on the basis of your e-mails and conversation with OCPF staff and solely within the context of the campaign finance law. Unlike the majority of opinions issued by OCPF, this response contains broad advice on a wide range of topics, rather than the office's view with regards to a particular situation. Therefore, I urge you to contact us if you have additional questions or would like specific advice regarding the campaign finance law.

Finally, it is my understanding that you are already familiar with a good deal of the interpretive bulletins, guides and opinions cited in this letter. If this is not the case or you would like to review the material further or obtain forms, the documents are on our website, www.state.ma.us/ocpf, or we can send you copies of what you need. Thank you for your interest in the campaign finance law.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director

MJS:bp

cc: Janice McGrane, Georgetown Town Clerk